

Receipt No 30878

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FILED  
BUTTE, MT

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PATRICK E. DUFFY, CLERK

BY \_\_\_\_\_  
DEPUTY CLERK

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA,  
BUTTE DIVISION**

CHRIS J. SEELYE,

Plaintiff,

v.

CORNTHWAITE, INC.

Defendant.

Cause No.: CV-06-13-B4-LSO

**COMPLAINT & JURY REQUEST**

**COMPLAINT**

¶1 Comes now the Plaintiff, Chris Seeley, and alleges the following against Cornthwaite, Inc.

¶2 Mr. Seelye is a citizen of the State of Montana and resides in Ravalli County.

¶3 Cornthwaite, Inc. is a citizen of the State of Oregon. Cornthwaite Inc. is an Oregon corporation and has its principal place of business in Oregon.

¶4 Jurisdiction is founded on diversity of citizenship pursuant to 28 U.S.C. § 1332. Mr. Seelye and Cornthwaite, Inc. are citizens of different states. The amount in controversy for Mr. Seelye's individual claims exceeds \$100,000.00, exclusive of costs, interest and attorney fees.

¶5 Kimberly Cornthwaite was acting as an agent of Cornthwaite, Inc. within the course and scope of her duties at all times relevant to the allegations of this complaint.

¶6 On September 16, 2003, Mrs. Cornthwaite was driving a 1996 Chevrolet, Sport Utility Vehicle (the "Vehicle") northbound on Blacktail Creek Road approximately 13 miles south of Dillon, Montana, in Beaverhead County.

¶7 Carl Cornthwaite, Mrs. Cornthwaite's husband, was riding in the front right seat of the Vehicle. Jim Wigen was riding in the rear left of the Vehicle. Mr. Seelye was riding in the rear right seat of the Vehicle.

¶8 Mrs. Cornthwaite was under the influence of alcohol while she was driving the Vehicle.

¶9 As Mrs. Cornthwaite drove northbound on Blacktail Creek Road, she drove the Vehicle off the roadway onto the soft right shoulder. She turned the Vehicle sharply to the left, overcorrecting. The Vehicle crossed the roadway and entered the borrow pit on the left. Mrs. Cornthwaite turned the Vehicle sharply to the

right, overcorrecting, which caused the Vehicle to crash and roll one and a quarter times. The Vehicle came to rest on the driver's side facing south.

### **Negligence**

¶10 Mr. Seelye realleges ¶¶ 1 through 9.

¶11 Mrs. Cornthwaite owed a duty to Mr. Seelye to use reasonable care in driving the Vehicle. Mrs. Cornthwaite breached that duty when she caused the Vehicle to crash. Mrs. Cornthwaite's failure to use reasonable care caused Mr. Seelye injury and damage.

### **Violation of Law**

¶12 Mr. Seelye realleges ¶¶ 1 through 11.

¶13 Mrs. Cornthwaite violated Montana law. Mrs. Cornthwaite drove the Vehicle under the influence of alcohol upon the roadways of Montana in violation of § 61-8-401, MCA. Mrs. Cornthwaite failed to operate the Vehicle in a careful and prudent manner and unreasonably endangered the life, limb, and property of her passengers in violation of § 61-8-302, MCA. Mrs. Cornthwaite failed to operate the Vehicle in the right side of the roadway in violation of § 61-8-321, MCA. Mrs. Cornthwaite's violation of Montana law is negligence per se. Mrs. Cornthwaite's negligence caused Mr. Seelye injury and damage.

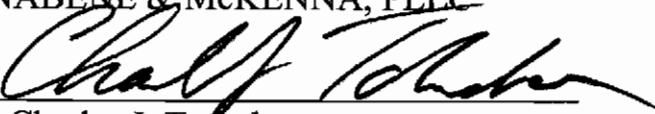
¶13 WHEREFORE, Mr. Seelye prays for judgment against Cornthwaite, Inc. for general damages and special damages, including, but not limited to, the following:

1. lost earning capacity to date;
2. lost future earning capacity;
3. value of services;
4. value of purchases;
5. health care expenses;
6. pain and suffering;
7. emotional distress;
8. established course of life; and
9. any other relief this Court deems just.

DATED this 2 day of March 2006.

TORNABENE & McKENNA, PLLC

By:



Charles J. Tornabene  
Tornabene & McKenna, PLLC  
Attorney for Plaintiff

### **JURY REQUEST**

Comes now the Plaintiff, Chris Seelye and requests trial by jury.

DATED this 2 day of March 2006.

TORNABENE & McKENNA

By:



Charles J. Tornabene  
Tornabene & McKenna, PLLC  
Attorney for Plaintiff

Charles J. Tornabene, Esq.  
Justin Starin, Esq.  
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Attorneys for Plaintiff

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CHRIS J. SEELYE,

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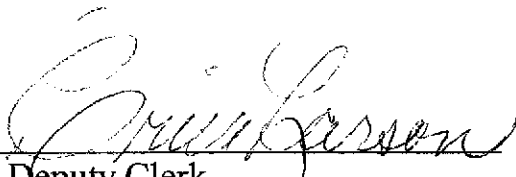
Cause No.: *CV-06-13-B4-C50*

**SUMMONS**

*To the above-named Defendant, Cornthwaite, Inc.*

You are hereby summoned and required to serve upon Charles J. Tornabene, the Plaintiff's attorney, whose address is 815 East Front Street, Suite 4A, PO Box 7009, Missoula, Montana, 59807-7009, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

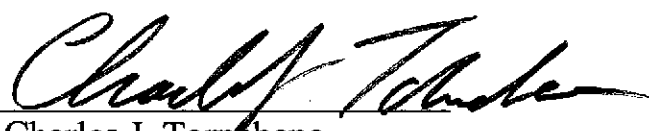
**CLERK OF U.S. DISTRICT COURT**

By:   
Deputy Clerk

[Seal of the U.S. District Court]

Dated: March 3, 2006

TORNABENE & MCKENNA, PLLC

By:   
Charles J. Tornabene  
Attorney for Plaintiff

# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Chris Seelye

## DEFENDANTS

Cornthwaite, Inc.,

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Ravalli  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Tornabene & McKenna, PLLC  
P.O. Box 7009  
Missoula, MT 59807-7009

ATTORNEYS (IF KNOWN)

## II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                                   |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 365 Motor Vehicle Product Liability <input type="checkbox"/> 380 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 450 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 610 Selective Service <input type="checkbox"/> 650 Securities/Commodities/Exchange <input type="checkbox"/> 675 Customer Challenge 12 USC 3410 <input type="checkbox"/> 691 Agricultural Acts <input type="checkbox"/> 692 Economic Stabilization Act <input type="checkbox"/> 693 Environmental Matters <input type="checkbox"/> 694 Energy Allocation Act <input type="checkbox"/> 695 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609

## V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify) \_\_\_\_\_  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Diversity jurisdiction pursuant to 28 U.S.C.

§1332. Causes of action: negligence; violation of § 61-8-401, MCA; § 61-8-302, MCA; § 61-8-321, MCA.

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION  
☐ UNDER F.R.C.P. 23

DEMAND \$

Excess of \$100,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

## VIII. RELATED CASE(S) (See instructions): IF ANY

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

3/2/06

SIGNATURE OF ATTORNEY OR PARTY

*Cheryl T. Tuck*

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